

BOARD OF PESTICIDES CONTROL

October 15, 2003

Schneider Reading Room, Baxter Memorial Library
71 South Street, Gorham

AGENDA/MINUTES

2:00 P.M.

The regular monthly meeting was called to order at 2:00 P.M. by Chair Michael Dann. Other members in attendance included, Berry, Crane, Eckert, Humphreys, Jemison and Walton.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the July 18, 2003 Board Meeting

Action Needed: Amend and/or Approve.

- ☒ Crane/Eckert: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Request from Syngenta to Exempt Reglone® Dessicant from the May 23, 2003 List of Aquatic Herbicides

The Board has received a request from Syngenta to exempt Reglone® Dessicant containing the active ingredient diquat dibromide from the May 23, 2003 List of Aquatic Herbicides. The manufacturer points out that Reglone® Dessicant is registered only for terrestrial uses while Reward® Landscape and Aquatic Herbicide contains the same active ingredient and is clearly registered for aquatic uses. The staff has been taking note of several problems resulting from use of a list based on EPA's master label and will be recommending that Reglone be removed from the current list.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and decision on exempting Reglone® Dessicant from the current list.

- ☒ This topic was initially tabled until after the discussion on Item # 4. Afterwards, the following motion was offered:

Eckert/Humphreys: Motion to table this topic indefinitely.

In Favor: Unanimous

4. Citizen Petition to Initiate Rule-making to Repeal Recently Adopted Section 4 of Chapter 41 Placing Restrictions on the Sale and Use of Aquatic Herbicides

On September 26, 2003, Robert J. Tardy of Newport submitted signatures of 159 registered voters from the Corinna, Newport and Pittsfield areas who are seeking repeal of Section 4 of Chapter 41. This new section became effective on May 12, 2003 and restricts the sale and use of the aquatic herbicides. The petitioners note that it affects many products that are used primarily in terrestrial applications. According to the Maine Administrative Procedures Act, the Board must initiate appropriate rulemaking within 60 days after receipt of the petition. The staff will offer a proposed timeframe for providing public notice and scheduling a public hearing. In addition, the staff will point out it has documented several problems resulting from use of the current list that is based on EPA's master label. The staff will therefore recommend that the Board hold a second public hearing at the same date and time to consider an alternate proposal that the rule simply be amended to only list products that are registered in Maine and have aquatic herbicide uses on the container's label.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Decision on a convenient time to initiate rulemaking to consider repeal of the recently adopted Section 4 of Chapter 41 and determination if the members wish to hold a second hearing on an alternate staff amendment.

- ☒ Batteese explained that the Board was obligated to hold a public hearing to consider repeal of the section of the rule dealing with aquatic herbicides. He recommended that the Board also consider the staff's alternate amendment at the same public hearing.

Walton/Crane: Motion made and seconded to initiate rule-making on the repeal request and to also consider an alternate amendment that would only list products that are registered in Maine and have aquatic herbicide uses on the container's label.

In Favor: Unanimous

5. Discussion with Rail Road Owners and their Contractors Regarding Plans for Monitoring their Applications in 2004

Since July 2002, the Board has been concerned that the currently accepted 10-foot buffer might not be sufficient to protect surface water from either drift or leaching of herbicides applied to railroad rights of way. In response, the Maine Department of Transportation organized a stakeholders group to collect information and that group met at least twice before making a presentation at the February 21, 2003 Board meeting. Afterwards, there was a consensus among the Board members that the staff should continue to approve variances for 2003 with buffers of 10 feet from water bodies. At the March 28, 2003 meeting, the Board approved a motion serving notice to railroad applicants that the members expected them to submit an herbicide residue monitoring plan for drift and soil

and water sampling protocols prior to February 2004 and before any variances were issued for the new year. The Board has asked the stakeholder group to report on their progress to date.

Presentation By: Robert Moosmann
Senior Landscape Architect, MDOT

Action Needed: Discussion and determination if additional information will be required for a proper monitoring plan.

- ☑ Bob Moosmann reminded the members the railroads are also regulated by the DEP that expects no soil erosion, and the Maine Forest Service that requires bare soil. He explained that railroad managers could make changes in their chemical regime and reported that MDOT had already decided not to use the more soluble diuron and bromacil products on state owned railroad rights of way. He observed that the cost of monitoring is an issue and indicated he did not feel soil sampling would provide useful information. He stated drift card and water sampling would be more sensible and asked if the Board was primarily concerned about diuron and bromacil use.

Humphreys referred to a glyphosate study that recommended buffers of 30 feet and indicated she supported drift card and water monitoring. Heather Jackson briefly reviewed the pilot work she had performed during the past summer season and noted one drift card placed on a stake in the Kennebec River had detectable levels of imazapyr.

Moosmann indicated that more could be done to improve best management practices including only using diuron and bromacil in the rail yards where water bodies are not an issue. A representative from Guilford Railroad indicated they supported at least 90 % of what the stakeholder group had been discussing while a representative of the St. Lawrence and Atlantic Railroad indicated that a 10 foot unsprayed buffer was tolerable.

Dann observed that the basic question should be "Does the buffer work?"

Moosmann raised a question of fairness about why only the railroads were being asked to conduct monitoring and also wondered who should actually collect the samples to prevent questions being raised about tampering. He reported the Portland Water District would be willing to collect and analyze some samples in their watershed. He also indicated the Maine Drinking Water Program might sample some public wells in the Jackman area to see if the herbicides are getting into the ground water.

The discussion concluded with Brian Chateauvert of RWC indicating a willingness to work on scheduling with any groups that want to do sampling, and Moosmann agreeing to call another meeting of the stakeholders group to discuss possible sampling in the coming year.

6. Review of Chapter 24 Requirements for Signs in Self-Service Sales Areas

The Board's field staff has raised questions about the purpose and effectiveness of the 8.5 by 11 inch signs that the Board's Chapter 24 Regulation requires be posted in self-service display areas of general use pesticide dealers. An internal discussion led to a consensus

that although the sign serves to inform the public about where more information on pest control may be obtained, there is a definite need for a redesigning the format and language. The staff will share some initial drafts and seek input from the Board.

Presentation By: Kelly Bourdeau
Public Information Officer

Action Needed: Discussion and determination if the Board wishes to recommend other changes or is ready to initiate rulemaking to allow a new format for the signs.

- ☒ Bourdeau explained that in moving the downloadable sign on the Board's website she had wondered about its purpose and posed questions to Henry Jennings. Since she had been uncertain about its message, Jennings had encouraged her to develop some other designs that might offer more useful information to the general public. Humphreys liked the new drafts but thought the Read and Follow the Label language should be retained on all the designs. Eckert also liked the drafts but suggested moving the Board's logo up to a higher and more prominent position. Gene Meserve indicated the sign was too small to offer a lot of information but also noted that some stores complain they don't have room to display the current sign. Jennings noted the regulation would have to be changed to allow use of any of the proposed designs. There was consensus the staff should continue to work on the designs. The staff was also directed to prepare some generic language for an amended rule that would allow use of a Board designated sign that designates a display area and provides safety information.

7 Consideration of Staff Negotiated Consent Agreement with Causeway Golf Club of Southwest Harbor

On June 3, 1998, The Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts of law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves the application of pesticides to the turf at the Causeway Golf Club that is considered a place open to use by the public. At the time of the application, no company employees were licensed as a commercial applicator. This action constitutes a violation of the Board's statutes that require a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ Crane/Eckert: Motion made and seconded to approve the consent agreements for agenda items # 7, 8 and 9.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with Grindstone Neck Golf Course in Winter Harbor

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves the application of pesticides to the turf at the Grindstone Neck Golf Course that is considered a place open to use by the public. At the time of the application, no company employees were licensed as a commercial applicator. This action constitutes a violation of the Board's statutes that require a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ Crane/Eckert: Motion made and seconded to approve the consent agreements for agenda items # 7, 8 and 9.

In Favor: Unanimous

9. Consideration of Staff Negotiated Consent Agreement with Bar Harbor Golf Course in Trenton

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves the application of pesticides to the turf at the Bar Harbor Golf Course that is considered a place open to use by the public. At the time of the application, no company employees were licensed as a commercial applicator. This action constitutes a violation of the Board's statutes that require a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ Crane/Eckert: Motion made and seconded to approve the consent agreements for agenda items # 7, 8 and 9.

In Favor: Unanimous

10. Consideration of Staff Negotiated Consent Agreement with Casco Bay YMCA in Freeport

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves the application of Garden Tech Sevin Concentrate to control ticks in an area adjacent to an outdoor playground that is considered a place open to use by the public. At the time of the application, no YMCA employees were licensed as a commercial applicator. This action constitutes a violation of the Board's statutes that require a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ Eckert observed the employees were trying to protect the children from ticks but but failed to realize they were exposing the children to pesticide residues. She noted the school IPM rule did not cover day care centers and urged staff to send a licensing reminder to operators of licensed day care facilities.

Eckert/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

11. Consideration of Staff Negotiated Consent Agreement with JBI Helicopter, Inc. of Pembroke, New Hampshire

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves the aerial application of Imidan to a blueberry field that resulted in a direct application onto an abutting property. At the time of the application, the pilot was misinformed about the property boundaries. This action constitutes a violation of the Board's Chapter 22 Regulation that requires applicators to determine the boundaries of the property to be treated and identify all sensitive areas within 500 feet prior to making powered applications.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained that an employee of the blueberry company had been riding in the helicopter to show the relatively new pilot the fields to be treated. He noted that the employee was apparently unaware of a property dispute and directed the pilot to treat land that did not belong to his company. While the residue levels indicated a direct hit on the adjoining property, Jennings did not use that information in setting the consent agreement penalty. Instead the amount reflects a failure by the applicator company to identify and mark the property boundaries prior to the application. Dann remarked that he felt the blueberry company should be held responsible for the violation and Berry indicated he felt they should at least share the responsibility.

Jemison/Eckert: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

12. Other Old or New Business

a. West Nile Virus Update - L. Hicks

- ☒ Batteese reported Hicks was not available but simply wanted them to know that although 91 birds had tested positive there was still no sign of a human case of WNV in Maine.

b. Update on Bayscaping Activities - G. Fish and K. Bourdeau

- ☒ Fish and Bourdeau reported on programs being held in Scarborough and Wells and demonstration turf plots being created at four sites in Orono, Augusta, South Paris and South Portland. They noted that they had also been working with the Town of Harpswell and that the Kennebec Journal had carried a story about the demonstration plot in Augusta at the Pine Tree State Arboretum.

c. Reminder that Annual Election of Officers
Should Occur at the Next Meeting - R. Batteese

- ☒ Batteese reported that this would likely be the last meeting for Crane and Dann so elections should be held at the following meeting.

d. Variance Granted to DeAngelos Brothers - R. Batteese

- ☒ Batteese indicated he had added this permit to the packet for informational purposes only.

e. Interest in Tour of DeBlois Critical Pesticide Control Area - R. Batteese

- ☒ Batteese reminded the members of the longstanding invitation to tour the DeBlois critical pesticide control area. He noted that he had not seen an opportunity to fit it in with a meeting and anticipated it would require a separate date if the members were still interested. No further action was taken.

f. Other ???

☒ Batteese reported Gov. Baldacci had nominated Seth H. Bradstreet III of Newport to replace Neil Crane and Dan Simonds of Rangeley to replace Michael Dann.

13. Schedule and Location of Future Meetings

☒ The Board scheduled the next meeting for Friday, November 21st in Augusta.

14. Adjourn

☒ A motion to adjourn was approved at 4:33 P.M.

Robert I. Batteese, Jr.
Director